



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0072; FRL-10013-73-Region 4]

Air Plan Approval; Georgia: Emission Reduction Credits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia in a letter dated October 18, 2019. The SIP revision updates Georgia's rule entitled *Emission Reduction Credits* which establishes a program for sources in specified counties to apply for credits for voluntary emissions reductions. EPA has evaluated Georgia's submittal and determined that it meets the applicable requirements of the Clean Air Act (CAA or Act) and EPA regulations.

DATES: This rule is effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0072. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Williams can be reached via telephone at (404) 562-9144 or via electronic mail at williams.pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Georgia Environmental Protection Division (GA EPD) submitted a revision to its SIP in a letter dated October 18, 2019,¹ modifying Rule 391-3-1-.03(13), *Emission Reduction Credits*,² in the State's air permitting rules. This submittal revises the counties in which sources may create emission reduction credits (ERCs). This change aligns Georgia's ERC program with the current status of counties designated nonattainment or contributing to a nonattainment area.

Georgia's October 18, 2019, SIP submittal revises the counties listed in Rule 391-3-1-.03(13)(a) to ensure that only sources in counties currently designated nonattainment — and

¹ EPA notes the Agency received the submittal on October 24, 2019.

² EPA notes that the Agency received several submittals revising the Georgia SIP transmitted with the same October 18, 2019, cover letter. EPA is considering action for these other SIP revisions in separate rulemakings.

counties³ contributing to the ambient air quality in the nonattainment area — may participate in the ERC program. The details of the submittal and EPA’s rationale for approving the changes are discussed in a notice of proposed rulemaking (NPRM) dated May 22, 2020. *See* 85 FR 31112. Comments were due on the May 22, 2020, NPRM by June 22, 2020. No comments were received on the proposed action.

These changes clarify eligibility for sources in certain counties to bank and create ERCs. These changes also make paragraph 391-3-1-.03(13)(a) consistent with current provisions under the State’s Nonattainment New Source Review permitting program.⁴ EPA also notes that the ERC program is a flexibility tool used by States and affected sources to comply with otherwise applicable requirements and is not expected to impact emissions in the State. Therefore, EPA concludes that these changes are consistent with the CAA and applicable EPA regulations.⁵

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Georgia Rule 391-3-1-.03(13), entitled “Emission Reduction Credits,” effective September 26, 2019,⁶ to clarify which sources in which areas of the State are eligible to create and bank emission reduction credits. EPA has made, and will continue to make, these materials generally

³ The NPRM dated May 22, 2020 (85 FR 31112) incorrectly included Rockdale county in the list of five counties being moved from 391-3-1-.03(13)(a)2 to (a)3. The correct list of counties being moved in this action includes Barrow, Carroll, Hall, Spalding, and Walton. Rockdale county remains in the list of counties under (a)2.

⁴ *See* 85 FR 2646 (January 16, 2020).

⁵ EPA has also concluded that these changes are consistent with applicable guidance on emissions trading, including EPA’s “Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits.” *See* 51 FR 43814 (December 4, 1986).

⁶ Specifically, in this action, EPA is incorporating by reference subsections (a), (d), and (h) of Rule 391-3-1-.03(13) with a state-effective date of September 26, 2019. EPA previously approved and incorporated by reference subsection (f) with a state-effective date of July 18, 2001, and subsections (b), (c), (e), (g), and (i) with a state-effective date of February 6, 2000; those prior approvals are not impacted by this action. EPA has included a clarifying explanation to this effect in the entry for Rule 391-3-1-.03(13) at 40 CFR 52.570(c).

available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.⁷

III. Final Action

EPA is approving the Georgia SIP revision with changes to Regulation 391-3-1-.03(13), *Emission Reduction Credits*, submitted October 18, 2019, to clarify which sources in which areas are eligible to create, bank, transfer, or use ERCs for Nitrogen Oxides and Volatile Organic Compounds, corresponding to the counties that are either currently in nonattainment or contributing to the current nonattainment area. EPA has concluded that the SIP revision is consistent with the CAA and EPA’s federal regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

⁷ *See* 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 26, 2020.

Mary Walker,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L–Georgia

2. In § 52.570, the table in paragraph (c) is amended by revising the entry for “391-3-1-.03(13)” to read as follows:

§ 52.570 Identification of plan.

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(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
391-3-1-.03(13)	Emission Reduction Credits	9/26/2019	[Insert date of publication in Federal Register], Insert citation of publication]	Except subparagraph 391-3-1-.03(13)(f), which was approved into the SIP with a state-effective date of 7/18/2001, and subparagraphs (b), (c), (e), (g), and (i), which were approved into the SIP with a state-effective date of 2/16/2000.
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